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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,934	05/20/2005	Patrick, Michel White	PUS-P001-030	7095
51184 7590 06/05/2007 MOETTELI & ASSOCIATES SARL ST. LEONHARDSTRASSE 4 ST. GALLEN, CH-9000 SWITZERLAND			EXAMINER REIMERS, ANNETTE R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 06/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,934

Applicant(s)

WHITE ET AL.

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/8/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because it is too long. Examiner suggests removing the numbers. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Schumacher (EP 0 893 097).

Schumacher discloses a surgical reamer for cutting a bone socket, comprising a cutting structure rotatable about a longitudinal axis and having a domed shell portion, e.g. 2, with an outer surface presenting multiple cutting sites comprising apertures, the shell having a static insertion profile being defined by a first curved portion generated about a first radius with a center that lies on the axis and a second curved portion generated about a center that is spaced apart from the axis, the cutting structure having a dynamic profile area generated upon rotation, both static insertion and dynamic profile areas lying transverse to the axis, wherein the static insertion profile area is smaller than the dynamic profile area (see figure 3), further comprising a pair of first curved portions that are situated in opposed relationship to one another with respect to the shell, wherein the pair of first curved portions describes a diameter of the domed shell, further comprising a pair of second curved portions that are situated in opposed relationship from one another with respect to the shell, wherein the pair of second curved portions is concave relative to the rotational axis, wherein the pair of second curved portions is convex relative to the rotational axis, wherein the pair of second curved portions is generally circular or parabolic, further comprising a plurality of first curved portions and a plurality of second curved portions, wherein the number of first curved portions equals the number of second curved portions, wherein the number of first curved portions is 2 or 4, further comprising a pair of first curved portions that are separated by a pair of second curved portions, together describing a cruciform shape, wherein the shell has a partially hemispherical domed shape with an apex and a pair of first curved portions that respectively define a pair of diametrically opposed base

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portions spaced from the apex, wherein the base portions further comprise bladed portions, the cutting structure having a static insertion profile area with a width, the cutting structure having a static extraction profile, the static extraction profile defining an area with an extraction width taken through the axis and the static insertion profile defining an area with an insertion width taken through the axis, wherein the extraction width can be less than the insertion width, wherein the dynamic profile area is circular, further comprising means for mounting the cutting structure to a tool holder (see figures 1-3). Regarding claims 33 and 34, in an alternate interpretation, a surgical reaming assembly, having a hollow reamer body, e.g. 2, a holder, e.g. 1, and a cruciform shaped alignment structure (see figure 3) .

With regard to the statement of intended use and other functional statements, e.g. which is attached to the handle by a bayonet catch, they do not impose any structural limitations on the claims distinguishable over Schumacher, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claims 1-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Weigand et al. (US Patent Number 4,023,572).

Weigand et al. disclose various embodiments of a surgical reamer for cutting a bone socket, comprising a cutting structure rotatable about a longitudinal axis and having a domed shell portion, e.g. 200, with an outer surface presenting multiple cutting sites comprising apertures, the shell having a static insertion profile being defined by a first curved portion generated about a first radius with a center that lies on the axis and a second curved portion generated about a center that is spaced apart from the axis, the cutting structure having a dynamic profile area generated upon rotation, both static insertion and dynamic profile areas lying transverse to the axis, wherein the static insertion profile area is smaller than the dynamic profile area e.g. (see figures 11, 14 and 17), further comprising a pair of first curved portions that are situated in opposed relationship to one another with respect to the shell, wherein the pair of first curved portions describes a diameter of the domed shell, further comprising a pair of second curved portions that are situated in opposed relationship from one another with respect to the shell, wherein the pair of second curved portions is concave relative to the rotational axis, wherein the pair of second curved portions is convex relative to the rotational axis, wherein the pair of second curved portions is generally circular or parabolic, further comprising a plurality of first curved portions and a plurality of second curved portions, wherein the number of first curved portions equals the number of second curved portions, wherein the number of first curved portions is 2 or 4, further comprising a pair of first curved portions that are separated by a pair of second curved

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portions, together describing a cruciform shape e.g. (see figure 26), wherein the shell has a partially hemispherical domed shape with an apex and a pair of first curved portions that respectively define a pair of diametrically opposed base portions spaced from the apex, wherein the base portions further comprise bladed portions, the cutting structure having a static insertion profile area with a width, the cutting structure having a static extraction profile, the static extraction profile defining an area with an extraction width taken through the axis and the static insertion profile defining an area with an insertion width taken through the axis, wherein the extraction width can be less than the insertion width, wherein the dynamic profile area is circular, further comprising means for mounting the cutting structure to a tool holder, wherein the mounting means further comprises an alignment structure extending between the base portions, wherein the alignment structure further comprises a centering boss, e.g. 432, e.g. (see figure 32), wherein the alignment structure includes a centering aperture that is rounded or keyed, wherein the mounting means further comprises a plate, e.g. 826, with a keyed aperture, e.g. (see figure 43), wherein the alignment structure further comprises a pair of bars, e.g. 827, spaced from one another on either side of the axis, with a pair of keyed male centering members, e.g. 838 (see figure 43) projecting inwardly from the bars toward the axis, wherein the alignment structure further comprises a pair of bars, e.g. 330, each having opposed terminal ends, with adjacent ends of the respective bars being spaced from one another along each base portion, including a centering structure, e.g. 326, located on the pair of bars for attachment to the handle, wherein the centering structure further comprises a cross-member, e.g. 327, forming an H-shape across the pair of

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bars, e.g. (see figure 26) wherein the alignment structure further comprises a bar, e.g. 826, having opposed terminal ends fixed at the base, including a cross-member, e.g. 829, having opposed free ends and being of a lesser length than the bar, the cross-member intersecting the bar at the axis to define a cruciform shape, e.g. (see figure 40), the alignment structure further comprising a pair of bars, e.g. 167 and 170 of figure 7, each having opposed terminal ends, with adjacent ends of the bars being spaced from one another along each base portion on either side of the axis, wherein the bars have opposing female notches e.g. (see figures 7), wherein the bars are curved or bent toward one another, the centering structure being formed at their closest convergence, wherein each of the bars is generally formed in an S-shape e.g. (see figure 7), the bars being non-intersecting and together presenting a generally Y-shaped or hourglass configuration, e.g. (see figure 26), further comprising a shaft, e.g. 821 having a fixed end joined to the bars adjacent the axis and extending longitudinally toward the handle, the shaft having a free end with radial spokes, e.g. 833, wherein the centering structure, e.g. 826, further comprises a shaft, e.g. 826a, extending longitudinally along the axis toward the handle e.g. (see figures 39-41).

With regard to the statement of intended use and other functional statements, e.g. which is attached to the handle by a bayonet catch, they do not impose any structural limitations on the claims distinguishable over Weigand et al., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches,

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but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER